Labor Relations & Collective Bargaining in Sport

Chapter 7

Management Contexts, Relevant Laws, and Cases

MANAGEMENT CONTEXT	MAJOR LEGAL ISSUES	RELEVANT LAW	ILLUSTRATIVE CASES
Union organizing and operating activities	Unfair labor practices: interference/discrimination by employer against union members	National Labor Relations Act	*NLRB v. AFL & AFLPOC*
Unilateral implementation of change in working conditions	Unfair labor practices by union or management: refusing to bargain in good faith violating collective bargaining agreement	National Labor Relations Act	*Morio v. NASL* *NFLPA v. NLRB & NFL Management Council*
Workplace discrimination	Unfair labor practices: employer discrimination or retaliation against union member union discrimination or retaliation against nonmember	National Labor Relations Act	*Nordstrom, d/b/a Seattle Seahawks & NFLPA; NFL Management Council and NFLPA*
Duty of fair representation	Union unfair labor practice: unfairly treating employee who is a union member or nonmember	National Labor Relations Act	*Peterson v. Kennedy*
Arbitration/dispute resolution	Arbitrator's authority Scope of review by court	Labor	*Major League Baseball Players Association v. Garvey*
Rights of retired employees	Contractual and fiduciary duties regarding marketing of retired players	Contract, agency	*Parrish v. National Football League Players, Eller v. NFLPA*

Labor Laws

State laws

Applies to public entities (e.g., university athletic departments)

Federal laws

Applies to private employers engaged in a business involving interstate commerce

Examples of Labor Law Legislation

1935

National Labor Relations Act of 1935

Taft-Hartley Act of 1947

1947

National Labor Relations Act

Section 7 sets forth employee rights, including:

- The right to join or assist unions
- The right to engage in collective bargaining with an employer over mandatory subjects (hours, wages, and terms and conditions of employment) through an exclusive representative chosen by employees
- The right to engage in concerted activity (strikes) for employees' own mutual aid and protection

Created National Labor Relations Board (NLRB)

Primary Activities of the NLRB

Conduct secret ballot elections for certification and decertification of a union

Prevent and remedy unfair labor practices committed by the employer (management) or union

Taft-Hartley Act

- Amended the NLRA to balance employee–employer relationship
- Gave employees right to *not* join or assist unions
- Prohibited unions from discriminating against nonunion employees
- Gave employers the right to use economic weapons, such as a lockout

Labor Relations Applied to Professional Sport

Labor movement took hold in the sport industry in the late 1960s/early 1970s

Earlier attempts were minimally successful

The American League of Professional Baseball Clubs and the Association of National Baseball League Umpires (1969)

Professional Sport Labor Unions

Virtually all major league teams are unionized

- Athletes, but not coaches or front office staff

Issues in collective bargaining negotiations:

- Short careers
- Little job security
- Disparity of bargaining priorities among stars vs. bench players
- Disparity of bargaining priorities in multi-employer units
- Long-term collective agreements are favored

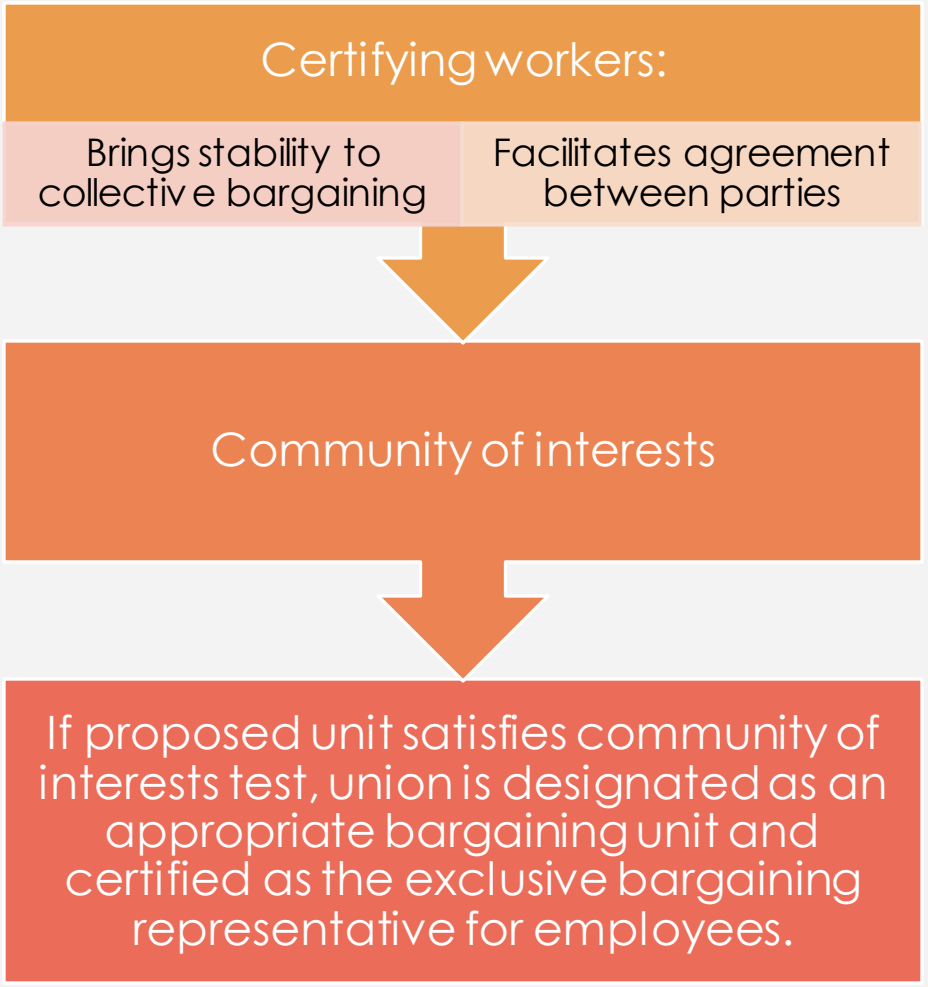
Employee Rights (NLRA §7)

Right to join/assist unions or not join/assist

Right to engage in collective bargaining over mandatory subjects

Right to engage in concerted activity for one's own mutual aid and protection

Certification of Union as Appropriate Bargaining Unit


Certifying workers:
Brings stability to collective bargaining
Facilitates agreement between parties
Community of interests
If proposed unit satisfies community of interests test, union is designated as an appropriate bargaining unit and certified as the exclusive bargaining representative for employees.

Duty to Engage in Collective Bargaining

- ***Mandatory subjects*** for bargaining:
  1. Hours
  2. Wages
  3. Terms/conditions of employment

- ***Permissive subjects***: *Anything not defined as 1-3 above*. Management is not obligated to bargain over permissive subjects.

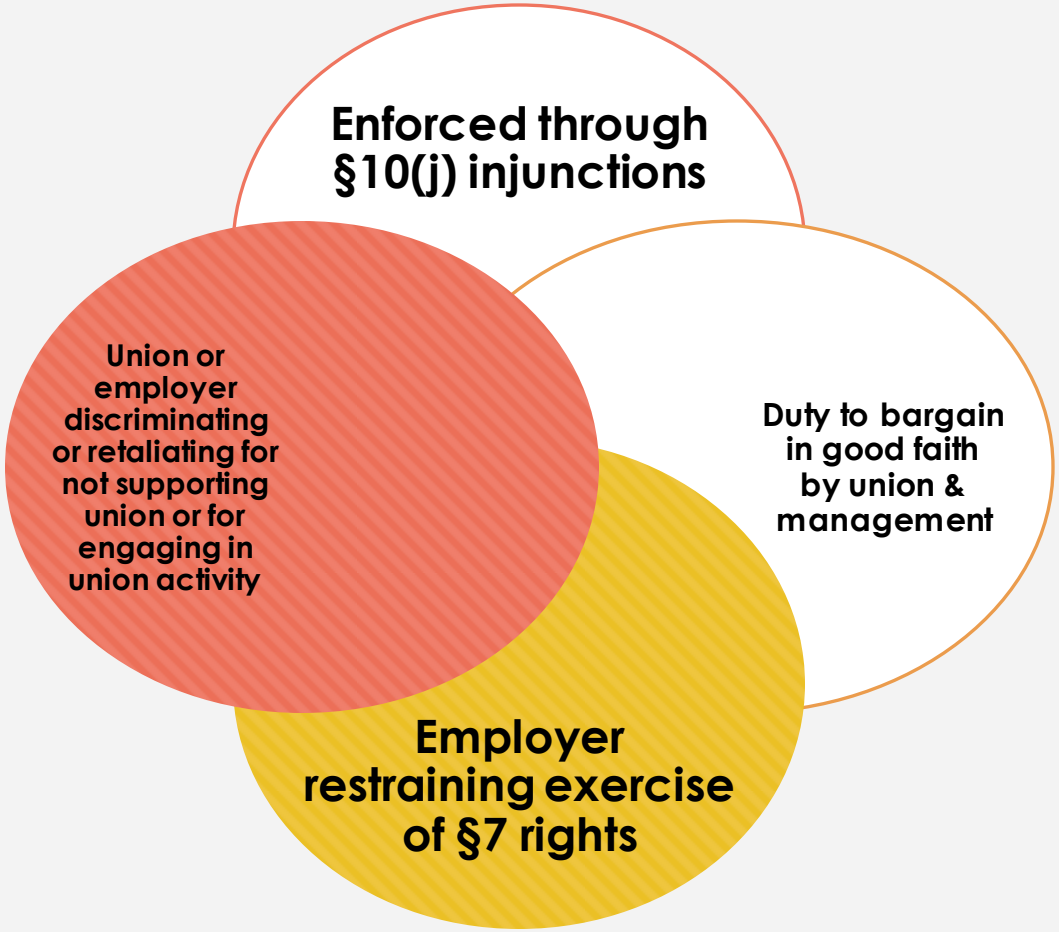
Duty of Fair Representation

- Union must represent all employees in bargaining unit fairly and in good faith.
  - No arbitrary, bad faith, hostile, or discriminatory actions by union.
- Otherwise, union commits an unfair labor practice per NLRA §8.

Concerted Activity

Workers:	Management:
• Right to strike (picketing, work slowdowns, etc.) for better economic conditions or to challenge working conditions	• Lockout (work stoppage) used as an economic weapon to convince the union to accept terms proposed by management

Some Unfair Labor Practices


Enforced through §10(j) injunctions
Union or employer discriminating or retaliating for not supporting union or for engaging in union activity
Duty to bargain in good faith by union & management
Employer restraining exercise of §7 rights

Collective Bargaining

- Union's goal: To negotiate a contract over mandatory subjects to chip away at management's right to run its business as it sees fit.
- Management's goal: In pro sport, it's often to get antitrust exemption and retain as many management rights as possible.
- Process favors compromise between the two sides.

Collective Bargaining in Professional Sports—Labor and Antitrust Law

- Forces negotiations over policies that are restrictive to players (e.g., drafts, salary caps, limits on free agency).
- Question: Do restrictive policies violate antitrust laws?
  - Collective bargaining process shields these practices from antitrust liability, provided the policies are subject to collective bargaining.

Collective Bargaining Agreements

A contract that represents the culmination of collective bargaining negotiations.

The collective bargaining relationship is ongoing (administration of the CBA is ongoing).

Each side has the right to convince the other side to come back to the bargaining table.

NFL Collective Bargaining Agreement, from March 2020

Provisions in Professional Sport CBAs

WAGE PROVISIONS	HOUR PROVISIONS	TERMS AND CONDITIONS OF EMPLOYMENT
Salary caps/taxes (team wide or based on players' service)	Training camp/spring training	Grievance arbitration: injury, medical, and labor grievance
Minimum salaries	Season schedule	Free agency
Fines	Postseason play	Draft
Salary arbitration	Travel	Discipline
Termination and severance pay	All-star game	Drug and/or human growth hormone testing
Licensing revenues	Exhibition games	Locker room and parking policies
Per diem pay	Charitable commitments	Player conduct
Fringe benefits (pensions, life and health insurance, etc.)	Winter or summer leagues	Health issues (medical care, access to records, right to second opinion)
Tickets	No strike–no lockout	Roster size (limits)
Charitable contributions	Public relations and promotional commitments	Anti-collusion policies

Arbitration

Process in which disputing parties hire a neutral third party to render a decision that is final and binding.

Rights arbitration: Interpretation or application of a contract

Interest arbitration: Disputes over the terms of a contract

Steps for Resolving Disputes

1. An employee discusses a grievance with the union rep or steward or reports it directly to a supervisor.
2. If the union representative and the employee agree the grievance has merit, they submit a formal written grievance.
3. The union representative and a management representative attempt to resolve the grievance.
4. The grievance may be heard before a committee to assist the two sides in resolving the dispute.
5. An arbitration hearing is held and an independent arbitrator or panel of arbitrators renders a decision.

Salary Arbitration in Professional Sports

To determine a player's worth:

In Major League Baseball:

- Choose the *midpoint* between two offers and determine if player is worth more or less than that midpoint; players with at least 3 but fewer than 6 years of MLB experience

In the National Hockey League:

- Choose either of two offers or an amount between the two; players are eligible after 4 years

Discipline

Most CBAs have at least one provision devoted to discipline

Grievance arbitration is process used to challenge disciplinary action

"Just cause": Refers to a level of scrutiny used to evaluate level of discipline (Team or league must have just cause to discipline player)

Drug Testing

- Drug and alcohol testing is a mandatory subject for bargaining.
- Goal is to negotiate fair provisions balancing results, player's privacy rights, confidentiality, medical concerns arising from the testing, determination of which drugs to test for, etc.

Salary Caps

1984—adopted by the NBA

Cannot be unilaterally imposed; must be negotiated with players (impacts wages, hours, terms & conditions)

Team salary cap; also caps for particular groups of players

Capologists: Specialized financial experts

Individual vs. Collective Bargaining

Employee-athletes:

- have individual bargaining power and individual contracts
- are also parties to collective bargaining agreements, through their players' association

CBA takes precedence over individual contract

- individual contracts cannot undermine minimum bargained terms (i.e., players cannot sign for below minimum salaries, even if player is willing to work for less)

Rights of Retired Players

- What is the duty of a players' union to retired players?
  - To market the likeness of a retired player?
  - To help players with injuries and health concerns?
- Focus is on current players, because by law the union is only the exclusive bargaining representative of current players, not past or future.
- Only way for retirees to seek relief is through the courts.

Competitive Advantage Strategies Labor Relations / Collective Bargaining

Have	Have a working knowledge of labor laws.
Strive	Strive to understand and abide by processes, procedures, and rules set forth in a CBA.
Ask	Ask legal counsel to guide you through collective bargaining and related employment decisions.
Ensure	Ensure that your decisions are in line with your organization's labor agreements.

Legal Review

- What do you think about players' associations, collective bargaining, and salary negotiations for professional athletes?
- Does hearing about a baseball player's $30 million salary make a difference to your opinion? How about a rookie in the WNBA who earns $36,000?